

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LORENZO LAWRENCE BOHANEN,

Defendant-Appellant.

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UNPUBLISHED

January 18, 2011

No. 295623

Wayne Circuit Court

LC No. 2009-010826-FC

Before: FORT HOOD, P.J., and MURRAY and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of felony murder, MCL 750.316, possession of a firearm by a felon, MCL 750.316, and felony firearm, MCL 750.227b. Defendant was sentenced as a habitual third offender, MCL 769.11, to concurrent terms of life imprisonment on the murder conviction, and 3-10 years' imprisonment on the felon in possession conviction, to be served consecutive to 2 years' imprisonment on the felony firearm conviction. Because defendant is not entitled to a new trial, we affirm.

On February 19, 2009, defendant and a friend, known only as J-Moe, went to spend the night at Sharell Porter's home. Sharell, with whom J-Moe was acquainted, shared the home with her sister Shamere. Upon their arrival, the victim was on the front porch of the home, apparently intending to buy drugs from Sharell. Defendant, J-Moe, and the victim all entered the home together and, at some point during the next few minutes, the victim was shot several times. Defendant laid the gun used to shoot the victim against a wall in the home, removed money and a cell phone from the victim's pockets, and then he and J-Moe dragged the victim's body outside, leaving it in a field next to the home. J-Moe then collected the cell phones of the two women present in the home at the time of the shooting, and he and defendant left the scene together. The prosecution's theory of the case was that defendant and J-Moe intended to rob the victim and that while J-Moe may or may not have been the one who pulled the trigger on the gun, defendant aided and abetted J-Moe in the entire matter. Defendant was charged with felony murder, first degree premeditated murder, felon in possession of a firearm, and felony firearm, but was found not guilty of the first degree premeditated murder charge. He was found guilty of all other charges and now appeals those convictions.

On appeal, defendant claims that the prosecutor engaged in misconduct when, during her closing argument, she misstated facts in evidence. Defendant asserts that this misconduct deprived him of a fair trial. We disagree.

Defendant properly preserved his claim that he was denied a fair trial by objecting to the challenged remarks. We review preserved instances of alleged prosecutorial misconduct de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 132 (2001). We review such claims on a cases-by-case basis, considering the alleged misconduct in light of all of the facts and evidence presented at trial, in context of all of the remarks the prosecutor made, and in light of defendant's arguments, to determine whether the defendant was denied a fair and impartial trial. *People v Rice (On Remand)*, 235 Mich App 429, 435; 597 NW2d 843 (1999); *People v Brown*, 279 Mich App 116, 135; 755 NW2d 664 (2008).

It is true that a prosecutor may not argue facts that are not in evidence or mischaracterize the evidence. *People v Watson*, 245 Mich App 572, 588; 629 NW2d 411 (2001). He or she may, however, argue all reasonable inferences arising from the evidence as it relates to his or her theory of the case. *People v Unger*, 278 Mich App 210, 236; 749 NW2d 272 (2008).

Defendant cites several specific statements made by the prosecutor in closing argument that were allegedly not supported by the evidence. First, the prosecutor stated that two witnesses testified they heard defendant say "Why" after the shooting, including Shamere Porter. Specifically, the prosecutor stated, "The Defense points out that both witnesses stated that they heard the Defendant say, 'Why', after the shooting. . ." Defense counsel objected, stating that the prosecution was misstating facts in evidence: "I never said, and there was no testimony or evidence that there were two witnesses who said after the shooting—or asked J-Moe, 'Why did you shoot him?'" In response to counsel's objection, the trial court advised, "Well, the jury has heard the evidence that it did, and with their collective memories they will recount what the testimony was, who said what."

At trial, Sharell Porter testified that immediately after she heard gunshots, she heard defendant saying "Why—why—why—why." Shamere Porter testified that she awoke to the sound of gunshots in the home and thereafter saw defendant and J-Moe arguing. When questioned as to whether she recalled anything specifically said by defendant or J-Moe, Shamere testified that she heard defendant ask "Why did J-Moe do that?" Thus, there were, in fact, at least two witnesses (including Shamere) who testified to hearing defendant say "Why" or some version thereof immediately after the shooting, and the prosecutor's remark averring the same was consistent with the evidence at trial.

The next alleged misstatement of fact by the prosecutor concerns where the victim was sitting when he was first shot, and the prosecutor's statement that after the first shot, the victim fell over and was shot again while on the floor. According to defendant, there was no testimony that the victim was shot while lying on floor.

The following took place during the prosecutor's closing argument:

*Prosecutor:* He said—he being the Defendant—in his testimony stated that [] the victim was sitting in the corner where the wall of the dining room and the kitchen meet, right? See that

on the sketch here. And he says he's seated on the stool there, and after the first shot he fell over, and then he shot him some more and—

*Defense counsel:* I'm going to object, Your Honor. [Defendant] made no demonstrative evidence as to where [the victim] was seated as the Prosecutor is suggesting.

*The Court:* Again, the jury has heard the evidence. It's up to them to determine what the testimony was.

At trial, defendant testified that when the victim entered the home, he went into the dining room and sat down. When asked where the victim was seated in relationship to defendant, defendant responded, "By the kitchen and by the living room wall, like right in that little corner." Defendant further testified that J-Moe went into a back bedroom with Sharell and began yelling at her. Next, J-Moe "came out and shot the guy."

*Defense Counsel:* Did you see him actually shoot [the victim]?

*Defendant:* Not at first. When I heard the first shot, I looked up, and then I saw him shoot him like three more times.

On cross-examination, defendant reiterated, "When I came in, we [he and the victim] sat in the dining room."

*Prosecutor:* So, did [the victim] also sit down on a stool?

*Defendant:* Yes.

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*Prosecutor:* And where was [the victim] at that time?

*Defendant:* Sitting on the stool.

*Prosecutor:* He's still sitting on the stool even after the first shot?

*Defendant:* Yeah. He was still sitting on the stool then.

*Prosecutor:* Then did you say three or four more times he shot?

*Defendant:* Like three more times, yes.

Defendant's testimony supports the prosecutor's argument as to where the victim was sitting when he was first shot. To the extent that the prosecutor attributed a statement to defendant that the victim was shot once while sitting, then shot repeatedly after he fell to the floor, such a statement by defendant is not in evidence. An inference could be drawn from the evidence that was presented, however, that the victim was, indeed, shot after he fell to the floor. This inference was what the prosecution was attempting to indicate to the jury, as shown by her closing remarks, made after defense counsel's objection, above:

He very clearly stated that, and this is important because the physical evidence that, the physical evidence being the places where the bullet holes are in the wall, in the house, and on the victim.

Yes. There are some markings or two indications of two shots there. But if, in fact, this had happened the way the Defendant said, we would expect that all of his shots would be there, right? But, instead, what this evidence shows is there is also shooting over here into this wall. He lied about how this happened and you have to take that into consideration when you go into other things he had to say because if [the victim] was, in fact, on this stool and fell down and was shot and didn't go anywhere, there wouldn't be shots flying out the front window, and the bullet holes across the street in the house across the street. And it wouldn't be the case that the wounds to this young man are the way they are.

Consistent with the prosecutor's remarks, a Detroit Police Department evidence technician testified that when processing the home after the shooting, she saw suspected bullet holes in two different walls in the living room. The medical examiner who conducted an autopsy on the victim testified that the victim had four gunshot wounds, one of which entered through his left buttock and exited through his right abdomen. While the prosecution inaccurately attributed a statement that the victim was shot after he fell to the floor to defendant, an inference could be made, based upon the testimony, that the victim could not have been sitting when all shots were fired. Moreover, the trial court instructed the jury at the conclusion of the trial that they were to decide what the facts of the case were, and that "... you may only consider the evidence that has been properly admitted in this case." The trial court further instructed that "The lawyers' statements and arguments are not evidence." A jury is presumed to follow its instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). As a result, defendant was not denied a fair and impartial trial, despite the prosecutor's inaccurate remark.

Lastly, defendant contends that the prosecutor misstated the evidence when she told the jury that defendant was shown to have testified untruthfully by virtue of the medical examiner's indication that the second shot into defendant was consistent with the victim being shot while lying on ground. On this issue, the prosecutor specifically stated:

You heard the testimony of Doctor Sung, and this is important. This is not somebody who was shot when they are down on the ground after they fell off the stool after the first shot like this Defendant untruthfully testified [sic].

Doctor Sung testified about the fact that gunshot number 2 had [a] wound track from back to front, and upward. You can see that when you look at the entry and exit wounds in this sketch.

Defense counsel objected, asserting, "There was no evidence that [the victim] was shot while lying on the ground. There was no testimony of that. That's misstating facts in evidence." The trial court responded, "Nobody testified as to that. I heard argument talking about the track of the wound. The jury will know what it heard and what it did not hear."

Contrary to defendant's assertion, then, the prosecutor did not affirmatively state that the medical examiner testified that the victim was shot while lying on the ground. Instead, the prosecutor repeated what the medical examiner did testify to concerning the wound path being from back to front and exiting through the abdomen, and argued the inference that because the wound path went from the back of the victim's body to the front, and upward, he could not have been sitting on stool when he was shot the second time, as claimed by defendant. This was a fair inference, given the evidence. The prosecutor did not misstate the facts in evidence and defendant was not denied a fair and impartial trial on that basis.

Affirmed.

/s/ Karen Fort Hood  
/s/ Christopher M. Murray  
/s/ Deborah A. Servitto